Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 04-36
IP-Enabled Services	)	

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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SUMMARY

NTCA urges the Commission to take a flexible and evolving approach to deciding the issues related to the regulatory classification and level of regulation placed on specific types of VoIP and IP-enabled services. There is widespread agreement that to the extent that VoIP and IP-enabled service providers use the public switched telephone network (PSTN) to originate or terminate voice calls they should be subject to the same inter-carrier compensation obligations as interexchange carriers (IXCs), irrespective of whether the traffic originates on the PSTN, on an IP network, on a wireless network, or on a cable network. A significant segment of the industry also agrees that all VoIP and IP-enabled service providers, regardless of their VoIP service's regulatory classification as an "information service," "telecommunications service," "cable service," or "wireless service," should be required to contribute to the universal service fund (USF) to ensure that all Americans have access to affordable communications services. And many in the industry urge the Commission to refrain from making a blanket ruling that it has exclusive federal jurisdiction over all VoIP and/or IP-enabled services.

The list of USF contributors must expand to include cable, wireless and satellite providers of broadband Internet access and facilities-based and non-facilities-based VoIP and IP-enabled service providers to ensure this Nation's continued success in providing all Americans, rural and urban, access to affordable and comparable communications services. Even if all VoIP and IP–enabled services were accommodated on broadband-only-facilities, the costs of these facilities are still higher in rural areas. Some form of access and/or universal service will be needed to ensure that rural consumers continue to receive access to advanced telecommunications and information services that are reasonably comparable in rural and urban

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The National Telecommunications Cooperative Association (NTCA)[1] hereby files its reply comments with the Federal Communications Commission (Commission or FCC) in the above-captioned proceeding.[2]

I. THERE IS WIDESPREAD AGREEMENT THAT VOIP AND IP-ENABLED SERVICE PROVIDERS SHOULD PAY ACCESS CHARGES

In its initial comments, NTCA urged the Commission to require voice over Internet protocol (VoIP) and IP-enabled service providers that use the PSTN to pay access charges. Simply because VoIP and IP-enabled service providers use an IP-network platform to provide voice communications, the Commission should not grant VoIP providers with Most Favored Nation (MFN) status and give them a free pass on access charges. This will only create an unfair competitive advantage in favor of VoIP providers in the highly competitive voice communications market. VoIP providers and competing voice providers using different network platforms all impose terminating traffic costs on rural ILECs. In order to adhere to the

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.
[2] *In the Matter of Federal-State Board on Universal Service Seeking Comment on the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1, Public Notice (rel. Feb. 7, 2003) (Public Notice).

Commission's principle of competitive neutrality, the Commission should require all VoIP and IP-enabled service providers to pay access charges.

A significant segment of the industry agrees. USTA states that all IP-enabled service providers that "touch the public switched telephone network should pay access charges."[3] OPASTCO recommends that at least until the *Intercarrier Compensation* proceeding is completed, all IP-enabled service providers that utilize a rural ILEC's access services should provide equitable compensation through access charges, not bill and keep or below cost rates.[4] ITTA further asserts that public policy requires full and equitable cost recovery from all VoIP and IP-enabled service providers using the PSTN.[5]

SBC also believes that the FCC should enforce its existing access charge rules for traffic that originates and terminates on the PSTN and that the Commission should apply interstate access charges to all IP-enabled services that use the PSTN.[6] Bell South concurs that VoIP services using or terminating traffic on the PSTN should be treated as interstate in nature and subject to access charges.[7] And Verizon recommends that IP-enabled providers should pay access charges when they use the PSTN to originate and terminate calls.[8]

Competitive local exchange carriers (CLECs) also advocate that VoIP and IP-enabled services providers should pay access charges. ALTS states that access charges are a piece of the larger inter-carrier compensation puzzle that ensures robust and vibrant USF. It supports an inter-carrier regime that adequately compensates carriers for their costs of originating and terminating traffic.[9] And RICA agrees that all traffic sent to the PSTN should be subject to

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[3] USTA Initial Comments, pp. 31-32.
[4] OPASTCO Initial Comments, p. 4.
[5] ITTA Initial Comments, p. 2.
[6] SBC Initial Comments, pp. 65-68
[7] Bell South Initial Comments, pp. 43-48.
[8] Verizon Initial Comments, pp. 42-47
[9] ALTS Initial Comments, p. 5. (ALTS also supports the Commission's policy that the cost of the PSTN should be born equitably among those that use it in similar ways and that the proper compensation rate should apply to traffic that uses the PSTN).

similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.[10]

State public service commissions are also united in their belief that VoIP and IP-enabled service providers should pay for their use of the PSTN. The Minnesota Public Utilities Commission states that any service provider that makes use of the PSTN should compensate the appropriate carrier for the use of their network.[11] The Missouri Public Service Commission reiterates that to the extent that an IP-enabled call connects with and utilizes the PSTN, the traffic should be subject to access charges absent further determination by the FCC in the unified inter-carrier compensation regime docket.[12] The Arizona Corporation Commission also urges the FCC not to exempt IP-enabled services that utilize the PSTN from charges that are assessed on equivalent service provided.[13]

Similarly the New Jersey Board of Public Utilities recommends that the FCC proceed cautiously in reaching a determination on the access charge issue with respect to measures that would increase existing access charges (i.e. subscriber line charges) to customers nationwide.[14] The Montana Public Service Commission argues that IP-enabled services that rely on the PSTN should incur appropriate carrier access charges.[15] The New York Department of Public Service further asserts that while government cannot and should not guarantee the long-term financial success of any provider in a competitive telecommunications market, neither should it perpetuate unfair regulatory advantages for some providers over others.[16] And the Iowa Utilities Board and Virginia State Corporation Commission maintain that any service provider that uses the PSTN

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[10] RICA Initial Comments, pp. 3-4.
[11] Minnesota Public Utilities Commission Initial Comments, p. 12.
[12] Missouri Public Service Commission Initial Comments, p. 12 & 19.
[13] Arizona Corporation Commission Initial Comments, p. 19.
[14] New Jersey Board of Public Utilities Initial Comments, pp. 3-4
[15] Montana Public Service Commission Initial Comments, p. 6.
[16] New York Department of Public Service Initial Comments, p. 3.

must compensate the appropriate carrier for their use of the network and that there should be no free ride provided.[17]

The policy of cost-causer pays is shared by NARUC which also points out that VoIP services that are marketed to customers as a substitute for telephone service should be classified as a telecommunications service under Title II. NARUC further recognizes that the PSTN has constantly evolved since the first phones were put into service more than 100 years ago. Digital switches and fiber rings are profoundly different than cord boards and a single strand of copper, but the core service used by customers remains fundamentally the same. New methods of delivering telephone service do not alter the fact that telephone service must continue to be reliable and affordable.[18]

Cable providers, such as Comcast, Cox, and National Cable Television Association (NCTA) also urge the Commission to use the following four-prong test to determine whether a provider should pay access charges: (1) the service makes use of NANP numbers; (2) the service is capable of receiving calls from or terminating calls to the PSTN; (3) the service is a possible replacement for POTS; and (4) the service uses IP between the service provider and the end-user customer, including use of an IP terminal adapter and/or IP-based telephone set. VoIP and IP-enabled service providers meeting this test would be required to not only compensate other networks for the use of their networks, but also contribute to USF, comply with CALEA, provide 911/E911, and make services available to persons with disabilities.[19]

It is no surprise that the opponents of paying access charges are the cost-causers themselves, which include IXCs, wireless carriers, and VoIP/IP-enabled service providers.

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[17] Iowa Utilities Board Initial Comments, p. 4; Virginia State Corporation Commission, p. 16; *also see* Maine Public Service Commission Initial Comments, p.6. (the FCC should address the likelihood that the existing intercarrier compensation mechanism and ESP exemption creates a arbitrage opportunity for some VoIP providers that could disadvantage carriers required to pay access charges).
[18] NARUC Initial Comments, pp. 5-6.
[19] NCTA Initial Comments, pp. 2-5: Cox Communications Initial Comments, pp. 17-20; and Comcast Initial Comments, pp. 7-11.

AT&T asserts that the FCC should exempt all VoIP service from access charges immediately and reform the inter-carrier compensation system. CTIA claims that traffic that traverses the circuit switched network should be subject to the unified bill and keep structure, while traffic that traverses only packet-based networks should be free from any form of regulation.[20] And the VON Coalition recommends that the FCC refrain from imposing access charges and USF contribution on all IP-enabled service providers.[21]

Opponents of access charges fail to recognize or choose to ignore the fact that when VoIP users place and receive voice calls utilizing a rural ILEC's originating and terminating switching facilities they are using the ILEC's switching facilities in the same manner that IXCs use these facilities for interstate voice traffic. The costs imposed on the underlying rural ILEC are the same regardless of whether the call is a VoIP call, an IP-enabled call, or a traditional IXC call. Providers of VoIP or other IP-enabled services that originate and/or terminate traffic on the PSTN should therefore pay the same access charges that IXCs pay for their use of underlying ILEC networks.

The Commission's rules currently require that providers of traditional long distance services pay fair compensation for using the public switched network.[22] The Commission has stated that when a "provider of IP-enabled voice services contracts with an IXC to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges."[23] The

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[20] CTIA Initial Comments, p. 10.
[21] VON Coalition Initial Comments, p. 26-28.
[22] *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* ¶19, WC Docket No. 02-361, FCC 04-97 (rel. April 21, 2004).
[23] *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* ¶19, WC Docket No. 02-361, FCC 04-97 (rel. April 21, 2004); citing 47 C.F.R. § 69.5(b) (imposing access charges on "interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services"). Depending on the nature of the traffic, carriers such as commercial mobile radio service (CMRS) providers, incumbent LECs, and competitive LECs may qualify as interexchange carriers for purposes of this rule. *See In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* ¶19, footnote 80, WC Docket No. 02-361, FCC 04-97 (rel. April 21, 2004).

Commission has also stated that its analysis "applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."[24] In addition to these rules, NTCA urges the Commission to specifically rule that when a VoIP or IP-enabled service provider originates a voice call on high-speed Internet connection, without a contract with an IXC, and sends the call to the PSTN to terminate, the VoIP or IP-enabled service provider will be subject to same compensation obligations that apply to landline, wireless, and cable providers, irrespective of whether the call is classified as an information service, telecommunications service, wireless service or cable service.

So long as VoIP and IP-enabled service providers continue to terminate calls on the PSTN, access charges should apply to these voice calls. Interstate and intrastate communications services, IP-enabled or not, that use the PSTN in ways that are indistinguishable from the ways that IXCs, ILECs, CLECs, cable telephony and wireless carriers use of the PSTN should receive the same regulatory treatment. The Commission's order concerning AT&T's IP-assisted voice service makes clear that use of IP technology in a network does not change the nature of a basic telecommunications service.[25] In other words, the protocol conversion to facilitate basic voice service does not convert the service to an enhanced service.[26] The same is true for services that originate with broadband connections and terminate on the PSTN. VoIP providers must account for their use and need of underlying ILEC networks, and these carriers that make up the PSTN must be able to recover the network costs imposed on them by VoIP and IP-enabled service providers.

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[24] *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, ¶19, WC Docket No. 02-361, FCC 04-97 (rel. April 21, 2004).
[25] *Id*.
[26] *Id*.

II. All VoIP AND IP-ENABLED SERVICE PROVIDERS SHOULD CONTRIBUTE TO THE UNIVERSAL SERVICE FUND REGARDLESS OF THE REGULATORY CLASSIFICATION OF THEIR SERVICE

In its initial comments, NTCA stated to the extent that the Commission is concerned about competitive neutrality and the sustainability of an adequate revenue base for its interstate USF mechanisms, it should require all VoIP and IP-enabled service providers to contribute to universal service on an equitable and non-discriminatory basis.[27] NTCA urged the Commission to implement rules that will keep pace with competition as competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and broadband Internet access services. NTCA reasoned that failing to position VoIP and IP-enabled service providers on equal footing with existing contributors will continue to place existing contributors at a distinct competitive disadvantage and further drain revenues from the existing USF contribution assessment base. Without competively neutral USF contribution rules, the disparate regulatory treatment of VoIP and IP-enabled services will invite arbitrage and create false economic incentives that will undermine the very networks that make up the PSTN and carry VoIP traffic. As more voice calls migrate to VoIP providers, the viability of universal service will be in jeopardy absent equal treatment of like services.

A major portion of the telecommunications industry agrees. Bell South states that both IP-enabled information and telecommunications services should be similarly regulated regardless of which bucket they fall in and regardless of whether those services are provided over wireline, wireless, coaxial cable, or other medium.[28] Bell South further recommends that USF contributions should apply to IP-enabled service without double taxation/assessment at the facility level.[29] Verizon also agrees that VoIP providers should have the same obligations to support the universal service fund as other providers of voice service and that USF obligations

[27] 47 U.S.C. §254(d).
[28] Bell South Initial Comments, p. 24.
[29] Bell South Initial Comments, pp. 25 and 44.

should apply to VoIP service regardless of whether they are classified as a telecommunications service or information service.[30] And SBC correctly acknowledges that the FCC has authority to assess USF contributions on all IP-enabled service providers.[31]

ITTA further states that exempting providers from universal service contributions will result in the FCC failing to meet its statutory public interest requirements harming consumers and adversely affecting contributing carriers.[32] USTA also supports this position and asserts that all IP-enabled service providers competing with providers of telecommunications services should similarly contribute the universal service and comply with other social obligations. USTA further recommends that the FCC to take steps to ensure that competing services will be treated equally regardless of whether they fall in the regulatory classification as an IP-enabled information service or and IP-enabled telecommunications service.[33]

Similarly state commissions also urge the Commission to require VoIP and IP-enabled service providers make USF contributions. The Maine Public Service Commission states that all VoIP providers should contribute to state and federal universal service funds.[34] The Iowa Utilities Board states that IP-enabled service providers who use the PSTN should have the same obligations and benefits related to universal service as other service providers.[35] The Arizona Public Service Commission states that VoIP providers should be required to contribute to USF just as other telecommunications providers.[36] The Minnesota Public Utilities Commission recognizes that exempting VoIP providers who use the PSTN from contributing to USF

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[30] Verizon Initial Comments, pp. 55-60.
[31] SBC Initial Comments, pp. 111-120.
[32] ITTA Initial Comments, p. 11.
[33] USTA Initial Comments, p. 21. NASUCA and RICA also urge the Commission to require VoIP providers to contribute to the universal service mechanisms. NASUCA Initial Comments, pp. 67-70; RICA Initial Comments, p. 5. Cable providers recommend that VoIP providers that meet NCTA's four-prong test described above should pay universal service contributions. NCTA Initial Comments, pp. 2-5.
[34] Maine Public Service Commission Initial Comments, p. 6.
[35] Iowa Utilities Board Initial Comments, p. 4.
[36] Arizona Public Service Commission Initial Comments, p. 19.

mechanisms will erode the support base and reduce state fees and taxes.[37] And the Missouri Public Service Commission urges that regardless of whether an IP-enabled service is classified as a telecommunications service or information service, any provider using the PSTN to originate or terminate calls should contribute to the USF.[38]

In contrast, the VON Coalition, Vonage, and 8x8 argue that VoIP and IP-enabled service providers should not be required to contribute to the universal service mechanisms. The VON Coalition states that the Commission should reform the universal service contributions methodology before considering whether VoIP and IP-enabled service providers should contribute to universal service. Vonage claims that it is indirectly contributing to universal service when it purchases an underlying telecommunications input. And 8x8 claims that the cost savings from VoIP and IP-enabled services will reduce the need for universal service support.

Waiting for the contribution methodology to change before requiring VoIP and IP-enabled service providers to contribute to universal service will only increase the USF contribution burden on all other competing voice telecommunications service providers. This would hand VoIP and IP-enabled service providers an obvious unfair competitive advantage for an indefinite period of time based solely on the technology use to provide the service and would directly violate the Commission's principle of competitive neutrality. Rather than wait for a change in the contribution methodology the Commission should immediately require VoIP and IP-enabled service providers to participate equitably in the currently revenue-based USF contribution methodology to eliminate this regulatory disparity and unfair competitive advantage.

VoIP providers use their platforms to provide voice service in direct competition with ILECs, CLECs, cable and wireless providers. VoIP providers, however, do have the same

[37] Minnesota Public Utilities Commission Initial Comments, p. 12.
[38] Missouri Public Service Commission Initial Comments, p. 14.

universal service obligations as their competitors. Contribution policies and rules should change in order to eliminate the distinct competitive advantage these companies have over contributing companies, as well as the drain VoIP providers will impose on the interstate revenue USF assessment base. Even if the Commission is not prepared to define certain VoIP and IP-enabled services as "telecommunication services," it has the ability to assess these services to further its universal service goals. Section 254(d) specifically provides the Commission with permissive authority to require "any other provider of interstate telecommunications" to contribute to universal service. NTCA urges the Commission to exercise this authority and immediately require VoIP service providers to contribute to the federal universal service mechanisms.

8x8's claim that the cost savings from VoIP and IP-enabled services will reduce the need for universal service support is false. VoIP and IP-enabled services would not exist without the underlying networks that carry VoIP calls. These networks include the telecommunications networks that provide high-speed Internet access service and make up the PSTN. These networks in many instances rely on universal support for their continued maintenance and viability. As more VoIP and IP-enabled service voice calls originate and terminate off the PSTN, these lost minutes and revenues assessed for USF funding will increase the overall USF contribution burden on competing landline and wireless telecommunications carriers. Over time, this will make it more and more difficult for some small, high-cost, rural ILECs to recover the cost of their total network facilities. Consequently, some high-cost ILECs that provide the high-speed Internet and PSTN connections may not have enough access revenues and/or USF support to cover their costs. Without these rural networks many consumers in high-cost rural areas would be left without landline, wireless and/or cable telephone and broadband service. To avoid this outcome, the Commission should require all VoIP/IP-enabled service providers to contribute to the universal service fund to support the underlying networks that enable broadband Internet access to carry VoIP traffic.

Vonage's argument that it already indirectly contributes to universal service when it purchases an underlying telecommunications input is without merit. A VoIP or IP-enabled service provider's purchase of a telecommunications input does not mean that the provider has contributed to the universal service funding mechanisms. If every telecommunications services provider could claim that because it purchased telecommunications inputs that the provider is relieved of its obligation to contribute directly to the universal service funding mechanisms, the USF mechanisms themselves would be completely under funded and many of the high-cost networks that currently carry VoIP and IP-enabled voice calls would cease to exist. Here again, VoIP providers are attempting to establish separate rules that would provide them with an unfair competitive advantage based solely on the underlying technology used to provide a voice call. The goals of universal service cannot be met without the broad support for the underlying networks that carry VoIP and IP-enabled traffic. VoIP and IP-enabled service providers therefore should be required to contribute to the federal universal service fund mechanisms, regardless of the regulatory classification of their specific type of service.

III. THE COMMISSION SHOULD REFRAIN FROM ASSERTING EXCLUSIVE FEDERAL JURISDICTION OVER ALL VoIP AND IP-ENABLED SERVICES

In its initial comments, NTCA recommended that the Commission refrain from asserting exclusive federal jurisdiction over <u>all</u> VoIP and IP-enabled services. NTCA urged the Commission to allow for some exclusive state jurisdiction or shared state and federal jurisdiction over VoIP and IP-enabled services. With the creation of new IP-based services it will be possible to identify "purely intrastate" VoIP and IP-enabled services. It will also be possible to track the intrastate and interstate components of these services.

NARUC, NASUCA, and many state commissions agree. The Commission has no foundation to declare exclusive jurisdiction over all VoIP and IP-enabled services. State regulation has not deterred the ability of CLECs and IXCs from providing intrastate and interstate voice services in the marketplace. There is no evidence that state commissions are regulating VoIP and IP-enabled services in a way that prevents them from providing competitive voice services in the voice communications marketplace. The argument that state commissions should not have jurisdiction over VoIP is the same argument MCI made before the FCC and state commissions in the early 1980's. MCI argued that its interstate service would be compromise if it had to obtain state commission approval over its intrastate service. MCI's argument rightfully failed and the resulting dual jurisdiction and regulation by the FCC and state commissions has allowed for the development of robust competition in both the intrastate and interstate long distance services markets.[39] Shared state and federal regulation over VoIP and IP-enabled services will only further enhance competition in the voice communications marketplace.

IV. CONCLUSION

Based on the reasons stated in its initial and reply comments, NTCA urges the Commission to find that:

(1) all VoIP and IP-enabled service providers are subject to the same inter-carrier compensation obligations as IXCs, irrespective of whether the traffic originates on the PSTN, on an IP network, on a wireless network, or on a cable network;

(2) all VoIP and IP-enabled service providers, regardless of their service's regulatory classification as either an "information service," "telecommunications service," "cable service," or "wireless service" are required to contribute to the universal service fund to ensure that all Americans have access to affordable communications services;

(3) all VoIP providers are required to adhere to similar regulatory obligations to provide consumers with 911 service, CALEA compliance and disability access, or require VoIP providers to provide other alternatives that meet the public's interest in security and safety;

(4) it is in the best interest of consumers to refrain from asserting exclusive federal jurisdiction over all VoIP and IP-enabled services and allow for the possibility that some VoIP and IP-enabled services may fall under exclusive state jurisdiction or shared state and federal jurisdiction;

(5) it is time to eliminate the ESP exemption for ISPs;

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[39] Virginia State Corporation Commission Initial Comments, pp. 8-14.

(6) the current definition of universal service must evolve to keep pace with consumer needs and evolving technology;

(7) rural ILECs who choose to remain on rate-of-return regulation should be permitted broadband transmission tariffing with pricing flexibility; and

(8) the list of USF contributors must expand to include cable, wireless and satellite providers of broadband Internet access and facilities-based and non-facilities-based VoIP and IP-enabled service providers to ensure this Nation's continued success in providing all Americans, rural and urban, access to affordable and comparable communications services.

Even if all VoIP and IP–enabled services were accommodated on broadband-only-facilities, the costs of these facilities are still higher in rural areas. Some form of access and/or universal service will be needed to ensure that rural consumers continue to receive access to advanced telecommunications and information services that are reasonably comparable in rural and urban areas of the United States.

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I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 04-36, FCC 04-28 was served on this 14th day of June 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.

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